

WRONGFUL IMPRISONMENT COMPENSATION ACT

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House Bill 4536 as introduced
Sponsor: Rep. Stephanie Chang
Committee: Criminal Justice
Complete to 6-15-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill creates the Wrongful Imprisonment Compensation Act to allow a person who had been convicted under a state law and subsequently imprisoned in a state correctional facility for one or more crimes that he or she did not commit to bring an action against the state in the Court of Claims to seek compensation for that wrongful imprisonment.

Prospectively, an action for compensation would have to be commenced within three years after entry of a verdict, order, or judgment that reversed or vacated the conviction with the charges being dismissed or the person being found not guilty on retrial. If the state challenged or appealed the verdict, order, or judgment, the three-year period would be tolled.

However, an individual who had been convicted, imprisoned, and released from custody before the bill became law could commence an action within three years of the bill's effective date.

Only the person who had been wrongfully imprisoned could file for compensation under the bill; the person's estate, personal representative of the estate, or any heir, devisee, beneficiary, or other person entitled under law to pursue a claim for damages, injury, or death of the person wrongfully imprisoned could not file a claim.

Other significant provisions of the bill include the following:

- ❖ A plaintiff (the person claiming to have been wrongfully imprisoned) would be entitled to receive compensation under the bill if he or she proves all of the following by a preponderance of the evidence that:
 - He or she was convicted of one or more state crimes and was sentenced to and served part of that sentence in a state correctional facility.
 - The conviction was reversed or vacated and either the charges dismissed or upon retrial the plaintiff was determined to be not guilty. (There would be no entitlement to compensation if the plaintiff had been convicted of another criminal offense arising from the same transaction and either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.)
 - New evidence exists (e.g., any evidence not presented in the proceedings leading to the conviction including DNA, expert interpretation, and new testimony) demonstrating the plaintiff did not perpetrate the crime and was not an accomplice or accessory results in the reversal or vacation of the

charges or a gubernatorial pardon, and results in either dismissal of all of the charges or a finding of not guilty on all of the charges on retrial.

- ❖ Compensation would be awarded to a plaintiff found to be wrongfully convicted and imprisoned as follows:
 - \$60,000 for each year of imprisonment, regardless of whether the plaintiff was released on parole or served the maximum sentence.
 - Economic damages – e.g., lost wages, actual costs such as attorney fees associated with the criminal defense or paid to prove innocence, and actual medical expenses related to the imprisonment required after release.
 - Reasonable attorney fees incurred in an action to obtain compensation under the bill. An award of attorney fees under the bill could not be deducted from the compensation awarded, and the attorney would not be entitled to receive additional fees from the plaintiff.
 - Reimbursement of any amount awarded and collected by the state under the State Correctional Facility Reimbursement Act. (This would be paid from the state General Fund and not reimbursed out of any state department's or agency's annual budget or current funding.)
- ❖ The compensation awarded above would not be subject to a limit on the amount of damages except as provided in the bill, could not be awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injuries sustained while imprisoned (though a plaintiff could file a separate action for compensation because of injuries sustained during the imprisonment).
- ❖ Acceptance of an award under the bill must be in writing and would constitute a complete release of all claims against the state and be a bar to any action against the state based on the same subject matter.
- ❖ The compensation awarded would be subject to the payment of child support. The plaintiff would be liable for child support or arrearages except for that erroneously accrued while the plaintiff was imprisoned. Child support would be deducted before the plaintiff received any money from the award.
- ❖ Nothing in the bill precludes a plaintiff from bringing a lawsuit against other parties for the wrongful conviction or imprisonment (e.g., the local prosecutor or law enforcement agency investigating the crime). However, an award under the bill would be subject to set-off or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person.
- ❖ The bill would not impair or limit the right of a state or local government to collect a debt of the plaintiff from any award of compensation.
- ❖ If the plaintiff was determined to have been wrongfully convicted and imprisoned, the record of the arrest, fingerprints, conviction, and sentence would be expunged

from the criminal record history and a document that is the subject of an order entered under this provision would be exempt from disclosure under the Freedom of Information Act.

- ❖ A copy of a complaint for compensation under the bill must be served on the attorney general and the office of the prosecuting attorney who prosecuted the crime; both would have an opportunity to contest the complaint.
- ❖ If the conviction had been for an assaultive crime or a serious misdemeanor, the victim would have to be notified in accordance with provisions of the William Van Regenmorter Crime Victim's Rights Act. The victim or victim's representative would have the right to appear at any proceeding concerning the complaint for compensation and to make a written or oral statement.

FISCAL IMPACT:

House Bill 4536 would have an indeterminate fiscal impact on the state, on the judiciary, and on local units of government. The fiscal impact on the state would depend on the number of eligible individuals making claims for compensation under the bill. Currently, data is not available on the number of individuals who were convicted of a crime, sentenced to a term of imprisonment, served at least part of the sentence, and had the judgment of conviction reversed or vacated because they were later found not guilty.

Under the bill, the state would be responsible for paying the following court-awarded damages: \$60,000 for each year of wrongful imprisonment; economic damages, including, but not limited to, lost wages, actual costs including attorney fees associated with the initial criminal defense, actual costs paid to prove the individual's innocence, and actual medical expenses related to the imprisonment required after release; and reimbursement of any amount collected by the state, from the individual while imprisoned, under the State Correctional Facility Reimbursement Act.

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on the number of actions for damages and how the provisions of the bill affected caseloads and related administrative costs.

The bill could have an indeterminate fiscal impact on local units of government, and would depend on further actions taken by individuals wrongfully imprisoned and on the outcomes of those actions, (i.e., lawsuits against witnesses, prosecutors, police officers, etc.).

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.